

CONTRACT PERFORMANCE

A. DELIVERY AND INSTALLATION

1. Delivery and Installation Requirements

- a. Orders must be installed within 40 days After Receipt of Order (ARO) unless a later date is indicated on the individual order. The required installation date will be indicated on each individual Lease Order by the ordering Agency. Each Lease Order shall indicate if delivery cannot be accepted prior to 7 days in advance of the installation and delivery date according to the Date Wanted information. Deliveries prior to this date may not be accepted and there will be no charge for delivering the equipment as stated on the Lease Order.
- b. Installation date may be changed by mutual consent of the Contractor and the State; however, prior to the installation date, the State defers the installation of any machine, but a new installation date will be established by mutual agreement. Such unilateral deferment shall not exceed 180 days, except by mutual agreement.
- c. Order Confirmation Procedures
 - (1) The Contractor must provide, within 30 days of contract award, an order confirmation methodology for both the manual and electronic ordering systems. At a minimum the Contractor shall confirm the receipt of each order, acknowledging expected shipping date of the equipment. This notice shall be generated within 5 days ARO at the Contractor's place of business, and shall be sent and/or made available to both the "Bill to" and "Ship to" addresses on the Lease Order. The confirmation acknowledgment can be transmitted electronically; however, it will be at the option of the ordering Agency to determine if the electronically transmitted method or the manual method is utilized.
 - (2) A second acknowledgement shall be sent by the Contractor including, but not limited to, the Lease Order number, the actual shipping date, mode and method of shipment, expected transit time, and expected on-site delivery date, and confirmation of installation (ready-for-use) date. This may be sent retroactive of actual ship date. The confirmation acknowledgment can be transmitted electronically; however, , it will be at the option of the ordering Agency to determine if the electronically transmitted method is acceptable.

2. Expedited Delivery

- a. The State may occasionally have a need for expedited installation of all or part of a terminal systems, including software products. The Contractor will be contacted in advance to confirm an expedited installation date. Expedited delivery and installation date must be within 15 to 20 days of receipt of order. In these instances, the Contractor shall provide installation of some equipment in accordance with the agree-to-date and will bill the using Agency the

“Expedite Fee(s)” listed in the Price list, less any quoted discount, for affected equipment and/or software.

- b. The agreed-to installation date shall be binding on both the Contractor and the State with respect to all other related contract provisions, including, but not limited to, liquidated damages.
- c. Should the Contractor agree to provide expedited installation and fail to do so the State will not be charged the Expedite Fees.

3. Need for Equipment Due to Emergency

- a. The Contractor shall make every reasonable effort to assist the State in procuring use of equipment compatible with that provided under this Agreement to meet emergencies such as a major breakdown or unforeseen peak loads.
- b. The State may accept or reject the offer of use of emergency equipment. If accepted, the charge for such use, if any, shall be a separate purchase order arrangement between the State Agency and the firm or government Agency providing the machine time.

4. Restricted Delivery Hours

The Contractor shall comply with Agency requirements that restrict deliveries to non-peak commute hours in specific locations, or require delivery within defined time frames due to site policies. When applicable the State will provide the information regarding these policies/or requirements.

5. Certification of Facility Readiness

If required to meet special environmental considerations, the ordering Agency will modify its site facilities to meet the Contractor’s minimum site and environmental specifications as supplied by the Contractor. These specifications shall be in such detail as to ensure that equipment, if installed according to these specifications, shall operate efficiently, from an environmental point of view and properly from a functional point of view.

- a. The State may prepare a site plan showing the location of each item of equipment and detailing the associated electrical power and environmental control facilities. If requested, the Contractor will review and comment on the adequacy of the State’s plan, and shall permit free access, subject to security restrictions at the site, for this purpose. If requested, the Contractor may prepare the site plan, and will be permitted free access to the site for this purpose, subject to the State’s normal security restrictions,. Specifications should include as a minimum, but not be limited to, an indication of the operating voltage required, maximum current under peak conditions (in amperes), power consumed (expressed in watts), temperature range within which the equipment is designed to operate, the humidity range within which the equipment offered is designed to operate, the equipment heat

producing pattern under normal operating conditions (expressed in BTU's for each specific Model Cluster), and the type and number of power receptacles required.

- b. The State shall cause the site to be prepared in accordance with the Contractor's site preparation specifications, unless the Contractor has agreed to be responsible for such site preparation, on or before the Facility Readiness Date.
- c. The Contractor shall provide an appropriate pre-installation checklist to insure that the ordering Agency has met all installation obligations prior to the Contractor installing the equipment. Please note: absence thereof shall mean that the Contractor is offering equipment which has no minimum or maximum environmental specifications. If required, upon completion, the Contractor will be required to certify in writing that the modifications have been completed and satisfy the Contractor's requirements.
- d. Any subsequent alterations or modifications to the site which are directly attributable to incomplete or erroneous specifications provided by the Contractor and which involve additional expense shall be made at the expense of the Contractor, to the extent that such costs would not have been incurred had the complete and/or correct specifications been initially provided. If any such site alterations cause a delay in the installation the provisions in this Agreement for late delivery shall apply.
- e. Unless mutually agreed otherwise by the ordering Agency, arrangements for procurement, installation, and maintenance of any necessary Contractor's communication media (telephone lines, modems, etc.) necessary for the remote transmission of data during installation or maintenance are not the responsibility of the State.

6. Certification of Equipment readiness

- a. Equipment must be installed and certified ready for acceptance testing by the specified Installation Date identified in the Lease Order. The Contractor shall determine that the equipment is ready for use, and operates in conformance with the Contractor's published specifications. Such certification must be in writing and presented to the Agency project leader as specified by the ordering Agency. Upon receipt of certification, the State will accept the equipment of the purpose of validating its installation and performance.
- b. Notwithstanding certification by the Contractor that the equipment has been installed and is ready for use, the equipment shall not be deemed installed within the terms of this Agreement until such installation is confirmed by the State through testing prescribed herein or performance of other suitable tests mutually agreed upon by the pertinent parties to this Agreement as being adequate for this purpose. If the test is successfully completed, the equipment shall be deemed installed and ready for use as of the date of the Contractor's certification. The State shall immediately begin acceptance testing of the equipment in accordance with the Section F, Acceptance Testing and Continuing Standards of Performance, below, and notify the Contractor in

writing, within five (5) working days, that the State has commenced the testing. If the equipment fails to successfully complete the test, the Contractor shall be notified immediately of the failure, with written confirmation to be provided in not more than five (5) working days. Control of the equipment shall immediately be given to the Contractor. The equipment shall not be deemed to be installed until the Contractor re-certifies such installation and the above referenced test is successfully completed.

- c. In the event the Contractor fails to install the equipment by the installation date, liquidated damages as prescribed herein under Contract Administration, below, shall apply. If the delay is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install the equipment, may cause the Contractor to remove any or all equipment already installed, and/or may terminate the Agreement. If the State elects one or more of these options, it may obtain replacement equipment from any source the State deems appropriate.
- d. If the nature of the equipment is such that the services of the Contractor are not required for its installation, and the Contractor so states in writing and the State agrees in writing that such Contractor services are not necessary, the Contractor may ship the equipment to the State site. If the equipment arrives not later than five (5) working days prior to the installation date, the equipment shall be deemed to have been installed on or before the installation date and no liquidated damages shall be paid, irrespective to whether or not the State is successful in installing the equipment with the Contractor's assistance. If this procedure is used, the State shall make every reasonable effort to install the equipment prior to the installation date, and shall confirm such installation in accordance with the above procedure concerning certification of installation by the Contractor. If, however, the State is unable to install the equipment, it shall notify the Contractor that Contractor assistance is required. The Contractor shall then be responsible for the equipment installation and certification that such installation has been accomplished, subject to the time frames stipulated in this section commencing with the date the State notifies the Contractor.

7. Software (Other than Operating System Software)

- a. The Contractor shall provide programming aids, program products and applications, on or before the Delivery Dates specified, and shall certify to the State that such software has been delivered and is ready for State use. For purposes of this paragraph, "delivered" also means received by the State, if such software is delivered through mail services hired by the Contractor, or electronic mail if by mutual agreement.
- b. If, in the opinion of the Contractor, the services of the Contractor are required to install the software on State equipment, "delivery" of the software, for the purpose of this Agreement, shall be deemed to include such installation services.

- c. In the event the Contractor fails to deliver the agreed-upon software by the dates specified, liquidated damages as prescribed herein will apply.
- d. During the period of this Agreement, when requested by the State, the Contractor shall furnish any additional software which it has developed or may develop at a future date for general use with the type of equipment leased under this Agreement and which it furnished to its customers generally, at the charges in the Price List.

8. Interface With Existing Equipment

If any equipment must interface to existing installed equipment in order to meet the specifications of the Lease Order, the Contractor will be responsible for making any necessary arrangements to accomplish the interface by contacting the Contractor's of the previously installed equipment. The Lease Order will specify the equipment to which an interface will occur. The Contractor must accept full responsibility for arranging the installation interface.

9. Software Customization and Configuration Support

The Contractor shall provide to each ordering Agency software customization and configuration support for control units and devices acquired under this Agreement.

Software customization is software which defines the operating parameters desired by the ordering Agency for the applicable control unit. This includes newly acquired control units as well as changes to existing control units that were acquired under this Agreement.

If the Contractor proposes a device that uses diskettes or CD's, the Contractor must also supply software customization support for that device.

Software Customization and Configuration Support must be available during the Principal Period of Maintenance. This support must have a number for both voice and FAX communication that is free to any caller within the State.

10. Pre-Installation Time

Prior to the Installation Date, at a time mutually agreeable to the Contractor and the State, the Contractor shall provide fifty (50) hours of system time for testing, file conversion, data purification, program development, and training. At the State's request this allowance shall be provided on equipment functionally equivalent in configuration to that being leased under this contract, at a charge specified in the bidder's price list and stated in the Cost section. Time shall be provided at the Contractor's facilities or on site, or by mutual agreement at another location.

11. Relocation

- a. If it is necessary and in the best interest of the ordering Agency to move the equipment leased under this contract from one ordering Agency location to another, except in an emergency situation, the ordering Agency will notify the Contractor, in writing or electronically, a minimum of seven (7) working days in advance of the anticipated move date, that the move is scheduled to take place. The ordering Agency will give the Lease Order number, date of disconnection, the locations, from and to which the equipment is to be moved, and the re-connection date, if more than five (5) working days after the disconnect date.

Unless the ordering Agency stipulates a longer period in their notification, the Contractor will then have seven (7) working days in which to move the equipment, reconnect it and have the equipment in working order. This shall be accomplished at the hourly rates stated in the Price list, less any applicable discounts.

At the ordering Agency's option, the Contractor shall be required to assist in relocating equipment that was converted to a purchase originally leased from the Contractor.

- b. The ordering Agency will reimburse the Contractor for all transportation, transit, risk insurance, rigging, packing, unpacking, and drayage charges for such relocation performed by the Contractor; however, the Contractor shall maintain responsibility for the equipment at all times during the move.
- c. If the Contractor is notified a minimum of seven (7) working days in advance of a move, and the Contractor does not actually relocate the equipment by the date required, then liquidated damages as specified in paragraph 7.a of the Contract Terms and conditions shall apply. Contractors should note that the liquidated damages shall be the same as for late deliveries.
- d. On, or before, the scheduled reconnect date, the Contractor shall disconnect affected equipment, physically move (relocate) and reconnect the equipment and certify the successful relocation.
- e. By mutual consent of the Contractor and the ordering Agency, the ordering Agency shall be permitted to move certain peripheral devices. In the event of such a move, the Contractor shall be relieved of liquidated damages as well as responsibility for the equipment during the move.
- f. Following an emergency move of leased equipment, if the Contractor has not been previously notified, within 21 days of the date upon which the move was accomplished, the ordering Agency will notify the Contractor, in writing or electronically that the move occurred on a specified date.
- g. If the ordering Agency elects to move the equipment and it is mutually determined that the equipment became damaged by reason of a disconnect of equipment to be moved, a move of the equipment, or a reconnect of equipment moved, not authorized by the Contractor either in advance or by default, the ordering Agency will pay, at prevailing rates, for the repair of said equipment.
- h. Rearrangement of equipment at a single site or ordering Agency convenience shall be at the ordering Agency expense.

- i. There shall be no interruption of lease payments as a result of relocation of equipment.
- j. Purchase option pay off amount shall not be affected by the relocation of equipment.

12. De-Installation Procedures

- a. A Lease Order form GSOP-191 (or STD. 65) is prepared with the Termination block checked. The model numbers and serial numbers of the affected equipment will be listed in the Model Number and Description columns of the form. The name of the Agency Contact and appropriate phone number must be included. In the case of a STD. 65 being used similar verbiage to the effect the termination is to take place with the above information will appear on the form.
- b. Within five (5) working days upon receipt of the GSOP-191 (or STD. 65) document, the Contractor representative should contact the Site Contact identified on the GSOP-191 document to schedule a time to remove the specified equipment. The Contractor will remove only those pieces of equipment identified by a serial number on the GSOP-191 document, unless changes are authorized in writing by the Site Contact.
- c. The State will tag and identify all equipment to be removed. State staff will be available for supervision or oversight in moving and/or packing the equipment.
- d. The designated Site Contact on the order will notify the Contractor in writing that the equipment is ready for de-installation. The Contractor will be responsible for disconnecting the equipment and getting it ready for removal from the site at no charge to the State. The Contractor will then have to pick up the equipment within a seven (7) working day period commencing from the specified date(s) agreed to in de-installation procedures paragraph (b) above. If the equipment is not removed by the Contractor within the seven day period the State shall have the right to ship the equipment to the Contractor's location and deduct the shipping and packing charges from any amounts due the Contractor under this Agreement.
- e. A letter from the Contractor acknowledging the removal of the specific equipment must be received by the State within seven (7) working days after pickup. This written confirmation must include sufficient information to clearly identify the equipment that was removed and the effective date of the removal.

13. Documentation

The Contractor shall make available and provide copies of all non-proprietary manuals and other printed materials, including updated versions thereto, which are useful and necessary to the State in its use of the equipment or software provided at prices listed in the Price List.

B. FREIGHT

All deliveries of leased equipment shall be **F.O.B. - DESTINATION**. There shall be no "Destination-In" charges nor shall there be any "Destination-Out" charges for leased equipment.

1. Transportation

- a. Shipments to and from the installation site shall be the responsibility of the Contractor and shall be made by commercial carrier, or Contractor owned carrier, in padded van or air freight. If air shipment by commercial carrier is not specified in the Lease Order, shipment shall be made by padded van, or Contractor may, at its option, use a premium method of transportation (e.g., air freight). Machines shall be preserved, packed and marked in accordance with the Contractor's standard practice.
- b. Notwithstanding the above subparagraph, the ordering Agency reserves the option, with concurrence from the Contractor (such concurrence not to be unreasonably withheld), to arrange for, and to pay all transportation, rigging, and drayage costs, at the time of the discontinuance of rental and lease. The State agrees that such transportation shall be by commercial carrier, using padded van properly constructed and equipped for shipment of electronic equipment.
- c. When the ordering Agency elects to specify air shipment by commercial carrier, written authorization for such method shall be furnished to the Contractor at least thirty (30) days prior to the scheduled shipping date and the ordering Agency shall pay the air freight charges. In this event, the Contractor shall furnish copies of the freight bills to substantiate transportation charges billed by the Contractor to the State.
- d. Transportation charges for the shipment of empty packing cases shall be paid by the Contractor except when the equipment is moved from one State location to another.
- e. The Contractor shall bear the cost of transportation, rigging, and/or drayage whenever equipment is shipped or moved for mechanical replacement purposes unless the replacement was due to fault or negligence of the State.
- f. The State shall pay only those rigging costs incurred at the State's location unless otherwise agreed to between the State and the Contractor.
- g. Upon notification as stipulated under Relocation above, the State shall arrange and pay for all transportation, rigging and drayage charges for such relocation. The Contractor shall supervise the relocation, packing and unpacking of equipment at the Contractor's hourly rates as shown in the Price List.

2. Packing and Unpacking

- a. Supervision of packing, unpacking and placement of equipment shall be furnished by the Contractor during the Contractor's normal working hours without additional charge to the State.

- b. Rearrangement of equipment on the same site for State convenience shall be at State expense.

3. Risk of Loss or Damage

The State shall be relieved from all risk of loss or damage to the equipment leased under this contract during periods of transportation, installation and during the entire time the equipment is in the possession of the Contractor, except when such loss or damage is due to the fault or negligence of the State. Loss or damage not due to the fault or negligence of the State shall be verified through a legal claims record such as a police or fire report.

C. MAINTENANCE

1. General

- a. Equipment and Operating System Software shall be maintained in good operating condition to ensure that the Continuing Standards of Performance prescribed the criteria of Acceptance Testing, of this contract are met. In determining good operating conditions, the State will evaluate performance of the equipment in accordance with criteria herein, and will compare this performance with that of similar equipment installed at other locations. The Contractor is responsible to maintain the equipment leased under this Agreement. The Contractor shall keep the equipment in good operating condition and shall always be responsive to the maintenance requirements of the ordering Agency. All such maintenance service, including both parts and labor, shall be furnished through the term of the lease at no additional charge to the State, as the monthly lease plan charges include such service.
- b. The Contractor may charge for some software maintenance services, in accordance with the provisions concerning Software Maintenance, Paragraph 8 below.

2. Exclusions

Maintenance service does not include:

- a. Electrical work external to the machines or maintenance of accessories, alterations, attachments, or other devices not listed in the Price List.
- b. Repair of damage or increase in service time caused by: accident; disaster, which shall include, but not be limited to, fire, flood, water, wind and lightning; transportation; neglect or misuse; alterations which shall include, but not be limited to, any deviation from Contractor's physical, mechanical or electrical machine design; attachments, which are defined as the mechanical, electrical or electronic interconnection to a Contractor machine or non-Contractor equipment and devices not supplied by Contractor.
- c. Repair of damage or increase in service time resulting from failure to provide a suitable installation environment with all facilities prescribed by the

appropriate Contractor Installation Manual—Physical Planning (including, but not limited to, failure of, or failure to provide adequate electrical power, air-conditioning or humidity control).

- d. Repair of damage or increase in service time attributable to the use of the machines for other than data processing purposes for which acquired.
- e. Furnishing platens, supplies or accessories; painting or refinishing material therefor; inspecting machines altered by other than Contractor, making specification changes or performing services connected with relocation of machines; or adding or removing accessories, attachments or other devices.
- f. Such service which is impractical for Contractor to render because of alterations in the machines or their connection by mechanical or electrical means to another machine or device.
- g. Repair of damage or increase in service time caused by the conversion from one Contractor model to another or the installation or removal of a Contractor feature whenever any of the foregoing was performed by other than Contractor.
- h. Replacement parts or increases in service time as set forth in the sections covering access to machines and in Maintenance Charges, Paragraph 7c, below.
- i. Maintenance parts will be furnished by the Contractor and will be new or equivalent to new in performance when used in these machines. Replaced maintenance parts become the property of the Contractor on leased equipment.

3. Responsibilities of the Contractor

- a. The Contractor shall provide maintenance (labor and parts) and keep the equipment in good operating condition.
- b. The Contractor shall specify in writing the frequency and duration of preventive maintenance for the equipment. Preventative (scheduled) maintenance shall be performed on a schedule which is mutually acceptable to the State and the Contractor and is consistent with the State's operating requirements.

The schedule will be based upon the specific needs of the equipment as determined by the Contractor. At the ordering Agency's option, preventative maintenance can be scheduled every three (3) to six (6) months for printers. When possible, preventative maintenance for printers should coincide with remedial maintenance and the following services be performed:

- (1) Clean card guide
- (2) Clean printwheel/printhead

- (3) Clean covers and remove paper chaff/dust with vacuum
 - (4) Clean platen, feed rollers, and paper bail rollers
 - (5) Check drive belt pulley
 - (6) Lubricate all necessary mechanical parts
 - (7) Check equipment components for excessive wear
 - (8) Replace parts as needed
- c. Contractor shall provide a central dispatch/help desk function with a toll free number where a field engineer may be dispatched or contacted on a 24 hours, 7 days a week basis to render equipment and software maintenance assistance.
- d. Remedial maintenance shall be commenced promptly after notification that equipment and/or software is inoperative and the Contractor shall always be responsive to the maintenance requirements of the State.

The Contractor's maintenance personnel will normally arrive at the State's installation site within the time specified in the maintenance plan selected by the ordering Agency after notification by the Agency that remedial maintenance is required for the equipment. For this purpose, Contractor shall have full and free access to the machines, subject to the agency's normal security requirements.

- e. When a Contractor's Engineer responds to a remedial maintenance call and the machine malfunction has not been diagnosed and repair begun within four (4) hours from the time of arrival of the Contractor's Engineer, the Contractor will utilize 2nd Level Technical Support. In the event that eight (8) additional hours elapse from the time of response of the 2nd level of technical support and the machine's malfunction has not been diagnosed and repair begun, and the malfunctioning component has a purchase price of \$20,000 or more, the Contractor will utilize 3rd Level Technical Support. In any event, the Contractor will assign one or more levels of support for analysis and repair of the problem until the machine has been returned to good operating condition.

2nd Level Technical Support—A machine(s) specialist with unique training and/or experience who specializes in providing diagnostic assistance and/or repair expertise when a service call is particularly difficult.

3rd Level Technical Support—A machine(s) specialist whose geographical responsibilities normally include multiple Field Engineering Branch Offices and who has received in-depth specialized training and experience and possesses extensive diagnostic ability specifically designed to assist on unusually complex problems.

- f. When the malfunctioning component has a purchase price of less than \$20,000 and repair has not been completed as specified in this Agreement within twelve (12) hours after notification that remedial maintenance is required, the Contractor shall restore service immediately by utilizing

replacement equipment. The replacement equipment is to remain in place until the malfunctioning component has been repaired and can be returned to service at a time mutually agreeable to the ordering Agency and the Contractor. The Contractor shall provide written notification of this temporary replacement including model and serial numbers of the equipment being replaced and of the temporary equipment being installed.

- g. Equipment which fails to function in the manner for which it was designed and contracted to perform to a degree such that the ordering Agency's programs are adversely affected, three (3) times in any sixty (60) day period, shall be replaced at the ordering Agency's request. Before requesting replacement, the Agency will attempt to satisfactorily resolve the problem with the Contractor. The State will be the sole judge as to the adverse impact upon the ordering Agency's program affected by the equipment failure. The Contractor shall provide written notification of this replacement including model and serial numbers of the equipment being replaced and of the equipment being installed.
- h. In the case of an *incorrect diagnosis* of the initial service call, the Contractor will be responsible for reimbursement to the Agency for any billing, other than the monthly lease, that is a direct result of the incorrect diagnosis. The reimbursement may be in the form of a credit to be deducted from any monthly charges due the Contractor.

4. Responsibilities of the State

- a. The State will provide adequate storage space for spare parts, and adequate working space, including heat, light, ventilation, electrical current and outlets, for the use of the Contractor's maintenance personnel at the time maintenance is being performed. These facilities shall be within a reasonable distance of the equipment to be serviced and shall be provided at no charge to the Contractor.
- b. Unless mutually agreed to by the Contractor and the State, State personnel will not perform maintenance or attempt repairs to equipment while such equipment is under the purview of this Agreement.
- c. Subject to the ordering Agency's security regulations, the Contractor shall have full and free access to the machines to provide service thereon. If persons other than Contractor representatives have performed maintenance or repair of a machine, and as a result further repair by Contractor is required, such further repairs will be made at Contractor's then applicable time and material rates, as shown on the Price List.
- d. The State shall provide an appropriate operating environment, including temperature, humidity, and electrical power, in accordance with the environmental requirements contained in the Contractor's published specifications for the equipment listed in the Price List.

5. Maintenance Credit for Equipment Malfunction

- a. If, beginning on the first day of the lease, Contractor is unable to restore a machine to good operating condition and equipment failure causes the machine to remain inoperative for consecutive scheduled work periods totaling 24 hours from the time the State notifies the Contractor that the machine is inoperative and it is determined that (1) the equipment failure was not caused by factors external to the machine, and (2) the equipment failure occurred through no fault or negligence of the State, the Contractor shall grant a credit to the State for each of the continuous inoperative hours. Such credit will be in the amount of 1/168th of the basic monthly lease charge for the inoperative machine, plus 1/168th of the basic monthly lease charge for any Contractor machine rented or leased from Contractor and interconnected entirely by the Contractor's power and/or signal cables which is not usable as a result of the equipment failure for each hour the machine, or machines are not usable; however, for machines whose basic monthly lease charge covers unlimited use, the credit shall be 1/720th of the basic monthly lease charge per hour. The amount of credit granted for each machine shall not exceed 1/30th of the basic monthly lease charge for the machine for any calendar day. The number of inoperative hours shall be adjusted to the nearest half hour.
- b. Maintenance credit provisions will not apply if equipment failure is caused by alterations or attachments not furnished by the Contractor and rental charges shall continue without interruption.
- c. The Contractor shall grant a credit in the amount of 1/84 of the total monthly lease for each hour after the sixth hour for a machine that was inoperative for more than six (6) consecutive hours after the Contractor's maintenance personnel should have arrived on-site, and, additionally, if the inoperable machine resulted in an interconnected machine to become unusable as a result of the breakdown the Contractor shall grant another 1/84 of the total monthly lease for each additional unusable machine, provided:
 - (1) The machine became inoperative through no fault of the Agency, and
 - (2) the breakdown was attributable to equipment failure, and
 - (3) the total credit shall not exceed 1/30 of the total monthly lease for the machine at fault per day per inoperable machine.

6. Major Field Modification

- a. At the State's request, the Contractor may provide for major on-site modification of equipment installed under rental or lease. Contractor shall use its best effort to effect such modification with minimal disruption to the State's operating schedule.
- b. When the period between the time that the machine to be modified is scheduled (by mutual agreement) to be returned to the State, and the time that

the machine is actually returned is more than 24 hours, Contractor shall grant a credit to the State for each hour the machine was not usable starting with the 25th consecutive hour. Such credit shall be in the amount of 1/168th of the basic monthly rental for the unusable machine, plus 1/168th of the basic monthly rental for any rented Contractor machine interconnected entirely by Contractor power and/or signal cables which is not usable as a result of the modification, provided, however, that for machines whose basic monthly rental covers unlimited use, the credit shall be 1/720th of the basic monthly rental. However, the amount of credit granted for each machine shall never exceed 1/30th of the basic monthly rental for the machine for any calendar day. The number of inoperative hours shall be adjusted to the nearest whole or half hour.

7. Maintenance Charges

- a. The monthly charges described in the Price List include all maintenance costs, and the State will pay no separate maintenance charges unless specifically set forth in this Agreement.
- b. There will be no charge for travel expense associated with maintenance service or programming service under this Agreement, except when a mutually agreed upon amount is pre-approved and a change order is issued, actual travel expense shall be allowed in those instances where the site at which the machine is located is not normally accessible by private automobile or scheduled public transportation.
- c. The State agrees to pay, at Contractor's applicable time and material rates shown in the Price List, all charges for maintenance and other service activities, or to pay for loss of or damage to a machine, caused by (a) use of the machine for other than data processing purposes, or (b) alterations and attachments. The State also agrees to pay, at Contractor's applicable time and material rates, all charges for repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls that are proven to be caused by the use of non-Contractor supplies. In no event shall the State pay more than the purchase price of the equipment.
- d. All maintenance and other service activities (including but not limited to activities relating to pre-installation planning, inspections, relocation of machines, engineering changes and altered programming) which may be made available by Contractor to the State at no additional charge or at Contractor's then applicable time and material charges, in connection with any machines or programming supplied under this Agreement, shall be subject to the terms and conditions of this Agreement unless such activities are provided under another written agreement signed by the State and the Contractor.

8. Software Maintenance

Types of Service

- a. Category I Service—When Category I Service is specified, Contractor will provide a central service location which will accept documentation, in a format prescribed by Contractor, indicating that a problem is caused by a defect in the program. Contractor will respond to a defect in the current unaltered release of the program by issuing: defect correction information such as correction documentation, corrected code, or notice of availability of corrected code, or a restriction or a bypass. Unless Category II Service is also specified for the program, the State will be responsible for the preparation and submission of documentation to the central service.
- b. Category II Service—When Category II Service is specified and a problem occurs which the State determines is caused by the use of a program and the diagnosis of the designated Contractor representative indicates the problem is caused by a defect in the unaltered portion of a current release of the program, the Contractor representative will perform the following problem resolution activities:
 - (1) attempting to correct or bypass the defect by providing the State with correct information issued by the central service, if available; or
 - (2) assisting the State with preparing documentation for submission to the central service, if specified as available; and, in any event
 - (3) if the program is inoperable, making a reasonable attempt to resolve the problem by assisting the State in applying a local fix or providing a bypass.
- c. Category III Service—When Category III Service is specified and the State encounters a problem, which the State's diagnosis indicates is caused by a defect in the unaltered portion of a current release of the program, the State may request Contractor assistance in resolving the problem. Such assistance, if requested, will be provided by a designated Contractor representative and may be subject to the availability of personnel. This assistance may include, but not extend beyond, the following problem resolution activities:
 - (1) attempting to correct or bypass the defect by providing the State with correct information issued by the central service, if available; or
 - (2) assisting the State with preparing documentation for submission to the central service, if specified as available; and, in any event
 - (3) if the program is inoperable, making a reasonable attempt to solve the problem by assisting the State in applying a local fix or providing a bypass.
- d. Category IV Service—An Original Equipment Manufacturer's (OEM) specialist with unique training and/or experience who specializes in providing diagnostic assistance and/or repair expertise when a service call is particularly difficult.

e. Charges:

Category I and Category II Services shall be provided at no additional charges to the State. Category III and IV Service shall be provided to the State at the rates shown in the Price List.

Contractor shall also have the right to charge for any additional effort which results from providing program services for an altered program. Such charge(s) will be at Contractor's then current rates shown in the Price List.

Although the Contractor shall make every reasonable effort to correct errors, Contractor does not guarantee service results or represent or warrant that all errors or program defects will be corrected.

9. Engineering Changes

- a. Engineering changes, determined applicable by the Contractor, will be controlled and installed by the Contractor on equipment covered by this Agreement. The Agency may elect to have only mandatory changes, as determined by the Contractor, installed on machines so designated. A written notice of this election must be provided to the Contractor for written confirmation. There shall be no charge for engineering changes made. Any Contractor initiated change shall be installed at a time mutually agreeable to the ordering Agency and the Contractor. The Contractor shall have the right to charge, at the Price List rates, for time and materials required due to non-installation of applicable engineering changes after the Contractor has made reasonable effort to secure time to install such changes.
- b. When the period between the time that the machine to be modified is scheduled (by mutual agreement) to be returned to service, and the time that the machine is actually returned to service is more than 4 hours, Contractor shall grant a credit to the State for each hour the machine was not usable starting with the 5th consecutive hour. Such credit shall be in the amount of 1/168th of the basic monthly rental for the unusable machine, plus 1/168th of the basic monthly rental for any rented Contractor machine interconnected entirely by Contractor power and/or signal cables which is not usable as a result of the modification, provided, however, that for machines whose basic monthly rental covers unlimited use, the credit shall be 1/720th of the basic monthly rental. However, the amount of credit granted for each machine shall never exceed 1/20th of the basic monthly rental for the machine for any calendar day. The number of inoperative hours shall be adjusted to the nearest whole or half hour.
- c. When a modification involves either equipment not in the Contractor's regular line of production or a special feature which is specified as available only for plant installation, the provisions of the above paragraph (9.b) are not

applicable. In any event, the Contractor shall inform the using Agency of the time frames for modification.

10. Alterations and Attachments

- a. With the written consent of the Contractor, such consent not to be unreasonably withheld, the State may make alterations or install attachments to the equipment at the State's expense, if in the Contractor's opinion no safety hazard is thereby created. The State shall assume full liability for any damages and/or degradation of equipment performance attributable to such alteration or attachment.
- b. If the alteration or attachment interferes with the normal and satisfactory maintenance of any of the machines in such a manner as to render maintenance impractical, the State will, upon notice from the Contractor to that effect, remove the alteration or attachment and restore the machine to its normal condition.
- c. If an inspection by the Contractor is required to determine if the unaltered portion of the machine or system remains practical to maintain or that no safety hazard has been created, the State shall be so notified and a mutually agreeable inspection date will be scheduled. Charges for such inspection shall be paid by the State, at the applicable rates from the Price List.
- d. Repair of damage or increase in the Contractor's service personnel time attributable to the alteration or attachment will be billed to the State at the Contractor's applicable time and material rates from the Price List.
- e. Such alterations or attachments shall be removed and the equipment restored to the prior configuration at State expense before discontinuance of the equipment lease.
- f. Any reprogramming agreed to by the Contractor which is required to accommodate such alterations and/or attachments shall be accomplished at the State's expense.

11. Maintenance Coverage

- a. Principal Period of Maintenance (PPM) coverage:
 - (1) The ordering Agency may select a period or periods of maintenance coverage in accordance with the following:
 - i) A minimum monthly maintenance charge that is included in the monthly lease entitles the Agency to maintenance coverage during the Principal Period of Maintenance, the eleven consecutive hours of 7:00 AM to 6:00 PM.
 - ii) The ordering Agency may select, in lieu of the hours available for the minimum monthly maintenance charge, one or more optional

periods of maintenance coverage for an additional charge, to be included in the monthly charge. The additional charge is based on a percent of the minimum monthly maintenance charge, depending on the optional periods selected and the applicable machine group.

- (2) The hours of PPM coverage for individual systems on Monday through Friday shall be the same each day; and the hours on Saturday and Sunday shall be the same hours on all Saturdays and Sundays.
- (3) The ordering Agency may change its selected period of maintenance coverage by giving the Contractor fifteen (15) days prior written notice.
- (4) All machines covered under this Agreement must have a simultaneous span of time within the selected periods of maintenance coverage, at least equal to the shortest period offered for any machine in the system.
- (5) If the Agency requests unscheduled, on-call remedial maintenance to be performed at a time which is outside the selected periods of maintenance coverage, the service will be furnished at applicable per-call rate per man-hour as set forth in the Price List.
- (6) The Agency will not pay for travel expenses for remedial maintenance performed within the selected periods of maintenance coverage.

b. Preventative Maintenance (scheduled)

Preventative maintenance can either be performed within or outside of the PPM. If the Agency requests that preventative maintenance be performed outside of the PPM an additional charge may be applicable as set forth in the Contractor's Price List. No additional charge shall apply for preventative maintenance which is performed within the PPM or which the Contractor should have performed during the PPM.

c. Remedial Maintenance (unscheduled)

Remedial maintenance shall be performed after notification by authorized Agency personnel that the equipment is inoperative.

The Contractor shall provide the Agency with a designated point of contact and will make arrangements to enable its maintenance representative to receive such notification.

- (1) There shall be no additional maintenance charges for:
 - i) Remedial maintenance during the PPM coverage unless the remedial maintenance is due to the fault or negligence of the Agency
 - ii) Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, etc., after a service call has commenced.

- iii) Remedial maintenance required because the scheduled preventative maintenance preceding the malfunction had not been performed, unless the Agency had failed to provide access to the equipment.
 - iv) For time of delay beyond the period described above under Responsibilities of the Contractor, 3-b, Contractor shall continue to perform maintenance for the same amount of time outside the covered period without additional charge to the Agency.
 - v) Work performed during the first hour when remedial maintenance service is requested during the covered period of maintenance and the actual work is begun outside the period.
 - vi) Work performed as a result of a “call-back”, when a malfunction reoccurs which was serviced within the prior 48 hours.
- (2) The time required for the Contractor to respond to a call for remedial maintenance is known as *response time*; the time defined as the time interval between the time a trouble call is made and the time maintenance service personnel arrive at the site of the problem, exclusive of that time during which the Contractor is denied access to the equipment. The maximum response time will vary depending on the site location distance from the City Hall in the nearest Maintenance Service Center.
- (3) For those sites located within a 40 mile radius of City Hall of any Maintenance Service Center, the response time shall not exceed eight (8) hours. For those sites located outside of the 40 mile radius of City Hall of any Maintenance Service Center an extra one-half (1/2) hour will be allowed for each additional full 20-mile increment.

12. Premium Maintenance

Other types of service programs may be specified by the Contractor and designated in the Price List; however, the Contractor shall offer in the Price List an upgrade, in addition to the required maintenance stated herein, in the form of a *Premium Maintenance Program* that augments the required service requirements with the following minimum response times:

- a. Remedial maintenance shall be commenced promptly after notification that equipment and/or software is inoperative and the Contractor shall always be responsive to the maintenance requirements of the State.

The Contractor's maintenance personnel will normally arrive at the State's installation site within two (2) hours after notification by the State that remedial maintenance is required for the equipment. For this purpose, Contractor shall have full and free access to the machines.

- b. When a Customer Engineer responds to a remedial maintenance call and the machine malfunction has not been diagnosed and repair begun within two (2) hours from the time of arrival of the Customer Engineer, the Contractor will utilize 2nd Level Technical Support, as described above. In the event that four (4) additional hours elapse from the time of response of the 2nd level of technical support and the machine's malfunction has not been diagnosed and repair begun, and the malfunctioning component has a purchase price of \$20,000 or more, the Contractor will utilize 3rd Level Technical Support, as described above. In any event, the Contractor will assign one or more levels of support for analysis and repair of the problem until the machine has been returned to good operating condition.
- c. When the malfunctioning component has a purchase price of less than \$20,000 and repair has not been completed as specified in this Agreement within the required four (4) hours after arrival to perform remedial maintenance, the Contractor shall restore service immediately by utilizing replacement equipment. The replacement equipment is to remain in place until the malfunctioning component has been repaired and can be returned to service at a time mutually agreeable to the ordering Agency and the Contractor. The Contractor shall provide written notification of this temporary replacement including model and serial numbers of the equipment being replaced and of the temporary equipment being installed.

13. Optional Maintenance Programs

The State desires that additional service programs be offered in the Contractor's Price List. Remember that the State cannot pay for services in advance of the service being performed.

14. Equipment Substitution

- a. If the Contractor so desires, and the ordering Agency permits, the Contractor may provide spare major equipment components at the operating location at no additional cost, to be substituted by State personnel in the event installed equipment becomes inoperable due to equipment failure. If such an arrangement is deemed desirable, the Contractor shall instruct the appropriate State personnel in the proper methods of disconnecting failed equipment, physically replacing such equipment with the appropriate spare equipment, and connecting the spare equipment. Contractor will repair/replace failed equipment within five (5) working days after notification by the State of the substitution.
- b. The above described procedure is intended to assist the Contractor by facilitating his fulfilling the remedial maintenance response time requirements particularly in outlying areas and pertains only to the on-site substitution of major items of operable equipment for inoperable equipment by State personnel. It is not contemplated that replacement cables, circuit boards, or any parts, assemblies, or sub-components of operable equipment will be

handled in this manner. If such a procedure is agree upon, the State shall use all due care in substituting the equipment, but shall not be responsible, unless negligent, for damage to the Contractor's equipment.

- c. If the above described procedure is implemented, the State agrees to provide adequate storage for such repair spare equipment, secure with an appropriate lock, the keys to which shall be retained by both the Contractor and the State.

15. Equipment Replacement

Notwithstanding any other provision of this Agreement, leased machines, which fail to function in the manner for which they were designed to the extent that the State's programs are affected shall be replaced at the State's request. The State shall make every attempt to satisfactorily resolve the problem, including, but not limited to, invoking all applicable maintenance provisions, prior to requesting replacement. The State will be the sole judge as to the adverse impact upon State programs of non-functioning equipment requested for replacement.

16. Replacement Parts

The Contractor must have the capability of stocking 90% of the required replacement parts on an on-going basis for equipment listed in the Price List. The Contractor must maintain an inventory of the replacement parts and make the inventory available to the Department of General Services Contact for this Agreement upon request. The level of maintenance support must be such that it will maintain an effective level of system operation during the Principal Period of Maintenance. Upon request the Contractor must provide the named DGS Contact a plan that details how this requirement will be accomplished.

17. Maintenance Service Centers

Maintenance Service Centers is a site within fifty (50) miles of the City Hall from which Certified Engineers (CEs) can be dispatched and where spare parts can be stored. The Maintenance Service Centers listed will be used to calculate maintenance *response time*. Maintenance Service Centers are required in the following cities:

In the State of California:

Anaheim	Monterey	San Francisco
Bakersfield	Oakland	San Jose
Eureka	Redding	San Luis Obispo
Fresno	Sacramento	Santa Rosa
Los Angeles	San Bernardino	Stockton
Marysville	San Diego	

Outside the State of California:

Boulder, CO; Chicago, IL; Houston, TX; Manhassat, NY; New York, NY; Reno, NV

Contractor's must list the address, telephone number, number of field engineers and years of experience for each trained service person at each Maintenance Service Center. In addition, each Contractor is to identify the primary and back-up field engineer for each Maintenance Service Center. The list must be complete and include trained service personnel for all the product being offered under this Agreement. Each field engineer must have at least twenty-four (24) months experience maintaining the equipment, or similar equipment, which they are required to service.

The Contractor must include resumes and training certificates for each field engineer listed. All field engineers must have continuing, up-to-date training on the equipment being offered during the period of the Agreement. Upon request, each Contractor must offer a plan as to how the field engineers will maintain this up-to-date training.

If the State determines that the resumes and training certificates are inadequate to determine field engineer qualifications the State may request that the bidder submit references for any field engineer whose qualifications are in question. The State will be the final authority when determining whether a field engineer meets the required qualifications.

After the resumes have been reviewed they will be returned to the Contractor and will not be available for public review. The Contractor will maintain the resumes on file at a single location in California where they will be made available to the DGS Contact upon request.

If the Contractor has other Maintenance Service Centers which are intended to be utilized to perform services under this Agreement, they must be listed with the required Maintenance Services Centers and the numbers and qualifications of the personnel at each listed as for the required Centers.

D. TRAINING

The Master Rental Agreement will be used by a number of ordering Agencies whose locations and terminal requirements may be different and whose needs for training may vary significantly.

For the purposes of training, the Contractor shall agree to provide informal, "hands-on" instruction for ordering Agency personnel in operation of the equipment, at no additional charge, at mutually agreeable times prior to, or subsequent to, equipment installation. Training for equipment installation coordinators and project leaders will be conducted in Sacramento.

1. Training Plan

Contractors must offer a detailed training plan describing their concept of the scope of training, the duration of initial training (in hours, per student), and the training aids (including operating manuals) which are required to train programmers, operators, support staff, and user training specialists in the operation of all hardware and software. Training costs must be presented as a

cost per operator and must be inclusive of any costs for operator and reference manuals. Prices for training are a contract requirement and the Price List must show the training costs in detail.

a. Site Personnel Training

The Contractor must provide informal “hands-on” instruction for site personnel in the operation of the equipment, at no charge to the Agency, at mutually agreed upon times subsequent to the equipment installation. Site Personnel Training as a minimum will consist of:

- (1) Device overview and orientation
- (2) Operator control familiarization
- (3) Normal maintenance operation

b. Formal Installation Coordinator and Project Leader Training

The Contractor must provide formal classroom training for personnel requiring product overview and configuration/installation information.

Training will consist, as a minimum, of:

- (1) Basic overview of each piece of equipment
- (2) Features definition per model type
- (3) Errors and indicators
- (4) Configuration and Utilities Overview
- (5) Detailed instruction on how to configure the equipment
- (6) Documentation of one set per participant
- (7) Classes scheduled once every six months in Sacramento
- (8) Duration of 3 eight hour days
- (9) Class size: min. – 3, max. – 12

c. Training for Help Desk Personnel

Prior to installation of controllers, terminals and related printers, bridges, routers and hubs, training and documentation must be provided for Help Desk personnel who trouble-shoot failing equipment of these types. This training must be sufficient to enable the ordering Agency to identify the failing component. If requested by the ordering Agency, a refresher course must be made available. As a minimum, training will consist of:

- (1) Overview of all equipment
- (2) Basic troubleshooting of equipment
- (3) Errors and indicators
- (4) Diagnostic utilities
- (5) Problem determination procedures
- (6) Documentation of one set per participant
- (7) Classes scheduled once every six months in Sacramento
- (8) Duration of 3 eight hour days

- (9) Class size: min. – 3, max. – 12
- d. Training on new or substitute equipment
The Contractor must provide training and documentation on new or substitute controllers, terminals and related printers, bridges, routers and hubs, that are added to the Agreement. The training is to provide an orientation session that covers the capabilities and operation of these items. Training will consist, as a minimum, of:
 - (1) Device overview and orientation
 - (2) Operator control familiarization
 - (3) Normal maintenance operation
 - (4) Error indicators and correction procedures
 - (5) Documentation of one set per participant
 - (6) Classes scheduled once every six months in Sacramento
 - (7) Duration of 3 eight hour days
 - (8) Class size: min. – 3, max. – 12
- e. In addition, the Contractor must provide a minimum of one trained CE located in Sacramento to be available to the State for consultation/training on equipment hardware/software configurations during normal business hours of Monday – Friday, 6AM – 5PM. An equally knowledgeable backup must also be provided so there is always someone available for consultation/training during normal business hours.

2. Location and Time

The training must be conducted within five (5) days of the initial installation of terminals at any site unless a different schedule or location is mutually agreed upon by the ordering Agency and the Contractor.

Additional operator training, subsequent to any installation, will be provided by the Contractor at the ordering Agency's request at the costs specified in the Price List

3. Training Materials

Appropriate manuals and other materials must be provided to each participant in training. Training materials shall become the property of the ordering Agency upon completion of the training. Costs for all training materials shall be as specified in the Price List. Technical manuals of sufficient detail to successfully operate both the software system and the hardware system must be provided. Judgement as to the adequacy of these manuals shall be solely at the discretion of the State.

4. Training on New or Substitute Equipment

If requested by the ordering Agency, training and documentation on new or substitute equipment added to the contract must be provided by the Contractor at

no additional charge. The training is to provide an orientation session that covers the capabilities and operation of the items.

5. Additional Training and Personal Services

Additional training courses and personal services not stipulated herein, but which may be considered under the scope of this Agreement, may be offered in the Price List.

E. WARRANTY

1. Notwithstanding General Provisions #21, Warranty, the Contractor warrants that all machines leased, or purchased as an option of a lease, under the authority of this Agreement, when installed, will be in good working order, will be fit for the manufacturer's intended purpose and will conform to the Contractor's official published specifications.
2. Except as provided elsewhere in this Agreement, the Contractor's obligations and liabilities with respect to this specific warranty provision are limited to the repair or replacement of any parts or machines when either the State or the Contractor determines that the machines do not conform to the warranties stated herein.
3. The Contractor shall furnish all maintenance service and parts for a period of one (1) year beginning on the first day of the successful performance period, provided that such maintenance service or parts are not required because of accident, neglect, misuse, failure of electrical power or air conditioning, humidity control, or causes other than ordinary use. Any such service required as a result of erroneous site preparation specifications furnished by the Contractor or otherwise required due to the fault or negligence of the Contractor, shall be provided by the Contractor at no additional charge. All replaced parts shall be property of the Contractor. Prior to the expiration of the warranty period, whenever equipment is shipped for mechanical replacement purposes, the Contractor shall bear all costs for such shipment including, but not limited to, costs of packing, transportation, rigging, drayage and insurance. The warranty shall apply to the replacement machine beginning on the first day of the successful period for the replacement machine.
4. For one (1) year, beginning on the first day of the successful performance period as stated in Acceptance Testing herein, the Contractor warrants to the State that the machines are free from defects in material and workmanship. Contractor's obligation with respect to defects in the material and workmanship is limited to furnishing, on an exchange basis, replacements for machine or parts which have been properly reported by the State as having been, in its opinion, defective and are found by the Contractor upon inspection.
5. Service pursuant to this warranty will be furnished by the Contractor's nearest service location. The Contractor shall have prompt access to the machine, subject to the State's standard security requirements, to perform this service. There shall be no charge to travel expense associated with services for which the Contractor is responsible under this warranty provision.

6. When a non-Contractor control program is used by the State and as a result the Contractor's maintenance diagnostic routines do not pinpoint the failure, the State shall pay for the time spent by the Contractor in diagnosing the failure at the applicable per-call rate per man-hour then in effect.
7. When the Contractor is called to perform remedial maintenance service on the equipment and by mutual agreement it is determined that either no failure existed or that the service was outside the scope of this warranty, the State shall pay for the travel expense and the time spent by the Contractor at the applicable time and materials rates then in effect.
8. Unless otherwise mutually agreed upon, the Contractor shall not be required to adjust or repair any machine or part if it would be impractical for the Contractor personnel to do so because of alterations made by or on behalf of the State in the machine. The Contractor shall be responsible for interfaces with plug compatible equipment that is attached to the current controllers. Increased service pursuant to this warranty caused by any alteration or attachment shall be paid for by the State at the applicable time and materials rates as stated in the Price List, unless the Contractor elects not to apply such charge on an individual occurrence basis.
9. Warranty service must be provided in the same manner as specified for Maintenance Service under Maintenance, Responsibilities of the Contractor, above. Maintenance Credit for Equipment Malfunction, above, shall also apply to warranty services.

F. ACCEPTANCE TESTING AND CONTINUING STANDARDS OF PERFORMANCE

1. **Acceptance Testing for Equipment (including Operating System Software)**
 - a. Acceptance testing is intended to ensure that the equipment acquired operates in substantial accord with the Contractor's technical specifications, is adequate to perform as warranted by Contractor's response to the requirements of the State's solicitation document, and evidences a satisfactory level of performance reliability, prior to its acceptance by the State. If the equipment to be installed includes operating software as listed in the Lease Order, such operating software shall be present for the acceptance test unless substitute operating software acceptable to the State is provided. Acceptance testing is required for all newly installed technology systems, subsystems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period.
 - b. The Contractor shall certify in writing to the State, in accordance with Delivery and Installation above, when equipment is installed and ready for use, at which time operational control becomes the responsibility of the State. Acceptance testing shall commence on the first State workday following certification, and shall end when the equipment has met the standard of performance (performance criteria) as provided below, for a period of 30

consecutive days. Operation of the equipment to confirm its installation shall be considered to be a part of the acceptance test.

- c. In the event the equipment does not meet the standard of performance during the initial 30 consecutive calendar days, the acceptance tests shall continue on a day-to-day basis until the standards of performance are met for 30 consecutive days.
- d. If the equipment does not meet the standards of performance within ninety (90) consecutive days after the start of the acceptance testing, the State shall have the option to request replacement equipment, extend the performance period or terminate the order (or portions thereof) and seek relief as provided by the Rights and Remedies of State for Default provision in the contract. The State's option shall remain in effect until such time as the equipment meets the performance criteria, or 180 consecutive days after the start of the acceptance testing, whichever occurs first. If the equipment has not met the standards of performance by 180 days after installation, the contract shall be canceled or the defective equipment deleted from the contract whereupon the State may invoke its rights under the Rights and Remedies of State for Default provision in the contract.
- e. At the request of the Contractor, the State shall make available not only the failed equipment, but also those machines which must be utilized by the Contractor to identify the cause of failure and to accomplish the repair.
- f. Equipment shall not be accepted by the State and no charges associated with such equipment shall be paid by the State until the equipment has satisfactorily completed the acceptance tests. In addition, if required under the provision for software testing herein, no charges shall be paid until specified Contractor-supplied software has been accepted by the State.
- g. Immediately upon successful completion of the acceptance tests, the State shall notify the Contractor in writing of acceptance of the equipment and authorize payment on the first day of the successful thirty (30) day performance period. The State shall maintain adequate daily records to satisfy the requirements of acceptance testing. Increments of time shall be measured in hours and whole minutes. If after thirty-five (35) days from the start of the acceptance period, the Agency has not notified the Contractor and supplied the required documentation that the equipment did not pass the acceptance testing, the equipment is considered to have been accepted by the Agency.

2. Acceptance Testing for Software (other than Operating System Software)

- a. Acceptance testing is required for all Contractor-supplied software supplied under this contract, including all software initially installed, improved versions (new releases) of this software, any such software which has been altered (modified) by the Contractor to satisfy State requirements, and any substitute software provided by the Contractor in lieu thereof, unless the otherwise provided herein. The purpose of the acceptance test is to ensure that the software operates in substantial accord with the Contractor's technical

specifications and meets the State's performance specifications. The specific procedures for the accomplishment of such tests are as stated herein under Acceptance Testing Criteria.

- b. When software has been provided and certified in accordance with Installation and Delivery, the State shall begin acceptance testing on the first State workday following such certification, as provided in Acceptance Testing Criteria, below.
- c. If successful completion of the acceptance test is not attained within ninety (90) consecutive days after the start of the acceptance testing, the State shall have the option to request substitute software, cancel that portion of the contract which relates to the unaccepted software, or continue the acceptance tests. The State's option shall remain in effect until such time as the tests are successfully performed, or 180 days after certification, whichever occurs first. If the acceptance tests have not been successfully performed prior to the expiration of 180 days, that portion of the contract which relates to the unaccepted software shall be canceled, unless both parties agree to the continuation of the tests or to the delivery of substitute software. If the unaccepted software (or its functional equivalent) is crucial to the accomplishment of the work for which the equipment was acquired, and is so identified in the Lease Order, the State shall have the option of terminating the entire contract in accordance with the Rights and Remedies of State for Default provision in the contract.
- d. Unless otherwise provided under Acceptance Testing Criteria, software shall not be accepted by the State and no charges associated with such software shall be paid by the State until the software has satisfactorily completed the acceptance tests.
- e. Immediately upon successful completion of the acceptance testing, the State shall notify the Contractor in writing of the acceptance of the software and authorize appropriate payment as of the Delivery Date or thirty (30) days prior to successful completion of the acceptance testing, whichever occur later. The State shall maintain adequate records to satisfy the requirements of acceptance testing. Increments of time shall be measured in hours and whole minutes. If after thirty-five (35) days from the start of the acceptance period, the Agency has not notified the Contractor and supplied the required documentation that the equipment did not pass the acceptance testing, the equipment is considered to have been accepted by the Agency.

3. Acceptance Testing Criteria

- a. The Contractor shall certify in the writing to the State when the Equipment is installed and ready for use. The acceptance testing period (a period of thirty consecutive calendar days) shall commence on the first State workday following certification, at which time operation control becomes the

responsibility of the State. It is not required that one thirty-day period expire in order for another acceptance testing period to begin.

- b. If the equipment operates at an average level of effectiveness of ninety-eight percent (98%) or more for mechanical devices (printers) and ninety-nine (99%) for all others, for a period of thirty (30) consecutive days from the commencement date of the acceptance testing period, it shall be deemed to have met the State's standard of performance for the acceptance testing period. For acceptance testing purposes, the average effectiveness level is a percentage figure determined by dividing the Schedule Operational Hours minus down time by the Schedule Operational Hours. In addition, the equipment shall operate in at least minimal conformance with the Contractor's official published specifications applicable to such equipment on the date of this Agreement. The Contractor shall provide the document containing published specifications applicable to each machine.
- c. During the acceptance testing period, all the preventative maintenance time shall be excluded from the acceptance testing period hours. Equipment failure down time shall be measured by those intervals during the acceptance testing period between the time that the Contractor is notified of the equipment is returned to the State in operating condition.
- d. Equipment shall not be accepted by the State and no charges will be paid by the State until the standard performance is met.
- e. When a system involves on-line machines which are remote to the basic installation, the required effectiveness level shall apply separately to the system and to each remote machine.
- f. Upon the successful completion of the acceptance testing period, the Agency shall notify the Contractor in writing of acceptance of equipment. For leased equipment, the lease is to begin on the first day of the successful acceptance testing period. If after thirty-five (35) consecutive days from the start of the acceptance period, the Agency has not notified the Contractor and supplied appropriate documentation that the equipment did not pass acceptance testing, the equipment is considered to have been accepted by the Agency.
- g. If the equipment does not meet the standards of performance within ninety (90) consecutive days after the start of the acceptance testing, the State shall have the option to either require replacement equipment, or terminate the contract in accordance with the termination rights under this Agreement, or delete the defective equipment from the contract if individual machines fail to satisfactorily complete the acceptance tests, or extend the performance period. The State's option shall remain in effect until such time as the equipment meets the performance criteria, or 180 consecutive days after the start of the acceptance testing, whichever occurs first. If the equipment has not met the standards of performance by 180 days after installation, the affected order shall be canceled or the defective equipment deleted from the affected order

and the equipment shall be returned to the Contractor, at the Contractor's expense. The Contractor will then be subject to the default provisions contained herein.

- h. The standard performance for acceptance testing is defined as the operation of equipment at an average level of effectiveness of ninety-eight percent (98%) or more for mechanical devices (printers) and ninety-nine (99%) for all others for a period of thirty (30) consecutive days.

- i. Acceptance Testing for Equipment (including Operating Software)

- (1) The average level of the equipment availability is a percentage figure computed by dividing the total Schedule Operational Hours (SOH) minus down time (DT) by the Schedule Operational Hours, as follows:

$$\text{One - } \% \text{Availability} = \frac{\text{SOH} - \text{DT}}{\text{SOH}} \times 100$$

- (2) DT- Down Time, for acceptance testing purposes for equipment, is that period of time when the equipment installed at any one location is incapable of performing all of the functions for which the installation was intended (during SOH), due to a malfunction in the equipment or its operating software, excluding all external factors. During a period of system down time, all equipment which is part of the system shall be made available to the Contractor to facilitate prompt repair of failed machines. During this time the State may use operable equipment where such use does not interfere with the Contractor's efforts to restore failed equipment to service and where Contractor's permission for such use is given (such permission not to be reasonable denied). In the event that the system is required by the Contractor for testing or exercising of failed machines but is not made available by the State when requested, system down time shall not accrue during the interval between the time of Contractor's request and the time that the system is made available to the Contractor.
 - (3) During acceptance testing period, a minimum of 100 Scheduled Operational Hours with productive or simulative work will be required as a basis for computation of the effectiveness level of a system. However, in computing the effectiveness level, the actual number of hours in operation will be required for the calculation. In scheduling used during the acceptance testing period, the State shall schedule enough hours to achieve the minimum 100 hours required. When it is obvious that the Scheduled Operational Hours that will be accumulated during the acceptance testing period will be less than 100 hours, the scheduled operational hours may be supplemented using Contractor's maintenance diagnostic routines or simulated production operations, so as to provide a total of 100 hours.
 - (4) When a system involves on-line machine which are remote to the basic installation and/or interface equipment not necessarily remote and requires

equipment, cables, wires, etc., not supplied by the Contractor, the effectiveness level of the equipment supplied by the Contractor shall be computed to exclude down time attributable to equipment, cables, wires, etc., not supplied by the Contractor. The required effectiveness level shall apply separately to a system and to each Contractor's supplied remote machine unless the State and the Contractor agree otherwise.

- (5) During the acceptance testing period, down time for each incident shall start from the time the State notifies the Contractor's representatives or answering service of the equipment failure and shall end when the equipment is returned to the State in proper operating condition.
- (6) During the acceptance testing period, the Contractor shall perform appropriate preventative maintenance on the equipment, in accordance with the Maintenance provisions herein, and such time shall exclude from level of effectiveness computation.
- (7) If the State uses the equipment when the system or subsystem is down, as Down-Time is defined above, use of the equipment shall be excluded from the level of effectiveness computation, as will any down time resulting from equipment failure during such use.
- (8) Scheduled Operational Hours and down time shall be measured in hours and whole minutes. If meters are used to record the time, the meter readings will be converted into hours and whole minutes on a daily basis.
- (9) The State shall maintain appropriate records to satisfy all requirements of this section concerning acceptance testing.

- j. Should it be necessary, the State may, upon fifteen (15) days prior written notice to the Contractor, delay the start of the acceptance testing period, but such delay may not exceed thirty (30) consecutive calendar days. If the acceptance testing period, for the period between the installation date and the beginning of acceptance testing period, exceeds 30 days the State will pay an amount equal to the monthly rental as listed in the Lease Order.
- k. All maintenance service and parts shall be furnished by the Contractor without charge during an unsuccessful period of acceptance testing on the same basis as set forth in herein concerning Maintenance unless such maintenance service and parts are required as a result of the fault or negligence of the State.

4. Continuing Standards of Performance Criteria

The Contractor agrees that subsequent to completion of the successful performance period and acceptance of the equipment and software by the State, the availability and/or performance requirements and criteria established herein will be met throughout the full term of the Agreement.

- a. Following completion of the successful acceptance testing period and acceptance of the equipment by the State, the equipment must meet, on a continuing basis, a prescribed level of availability. The availability levels are defined as:

(1) Percentage of scheduled worked hours.

The continuing Standards of Performance percentage availability level shall be determined using the same method as that used to measure the operational use time during the acceptance testing period. The prescribed availability level which must be met is 98% for the mechanical devices (printers) and 99% for all the others. If the prescribed availability level cannot be met, the State shall invoke the remedies as described below.

(2) When the continuing Standards of Performance are not met, the State shall invoke the following remedies:

- i) For each one-half ($1/2$) percentage below the prescribed availability level prescribed above, $1/60^{\text{th}}$ of the corresponding monthly lease charge will be assessed for each hour down (in excess of the down hours allowed by the prescribed availability level) as liquidated damages for each affected machine. Such charge shall not exceed the monthly lease charged for 30 calendar days in any 30 day period for said equipment and may be deducted by the State from any monies payable to the Contractor pursuant to this contract. These remedies are not the same as liquidated damages for late deliveries.
- ii) These provisions will not apply if equipment failure is caused by alterations or attachments not furnished by the Contractor and lease charges shall continue without interruption.

(3) Equipment Replacement and Contract Termination

- i) If, during thirty consecutive day period following the successful acceptance testing period, a machine or configuration of machines does not achieve the required level(s) of availability, the State will notify the Contractor in writing that the machine or configuration of machines has not met the required level of effectiveness.
- ii) If the Contractor fails to bring the machine or group of machines to the required average availability level during the succeeding thirty consecutive days after mailing of the notice, the State may either:
 - One - Require the Contractor to replace the machine or group of machines failing to meet the performance standards. Each replaced machine must also meet acceptance testing following installation as set forth herein; or

Two - For leased equipment, terminate the lease for that equipment whereupon the State may elect to invoke its rights for default or terminate for convenience.

iii) In addition, if during the term of the total contract, three or more leased installations are terminated or purchased installations are replaced for failing to meet this continuing standard of performance, the State may then terminate the total contract for all installations. The State will pay no termination charges if any portion of the contract is so terminated. This does not abridge the State's rights under General Provisions section on Rights and Remedies of State for Default.

5. Acceptance Testing of Software Criteria (other than Operating System Software)
Notwithstanding Section III, Information Technology Special Provisions, the following applies:

- a. Immediately upon certification by the Contractor that programming aids, program products, and applications listed in the Lease Order have been delivered ready for State use, in accordance with the provisions above, Acceptance Testing of Software, the State shall test each such programming aid program product or application, in accordance with the procedures outlined below.
- b. Each installation site may perform a one-time test of such products to be assured that the products perform in accordance with the Contractor's published specifications. Said acceptance test(s) shall be mutually agreed to by both parties.
- c. If the Contractor has written application programs, the State will provide test data, and the Contractor will provide a test master for, and all output formats for such programs. The State will process in input transactions against the master file and produce the updated old and new master files to ensure that all transactions were applied correctly. All outputs will be checked for accuracy, format, and quality, and the programs will be accepted only when the State determines they conform to the specifications to which they were written.
- d. If successful completion of the acceptance test is not attained within ninety(90) days after the start of the acceptance testing, the State shall have the option to request substitute software, cancel that portion of the contract which relates to the unaccepted software, or extend the performance period until such time of the tests are successfully performed, or 180 days after certification, whichever occurs first.

If the acceptance tests have not been successfully performed prior to the expiration of 180 days, that portion of the contract which relates to the unacceptable software, shall be canceled, unless both parties agree to the continuation of the tests or to the delivery of substitute software. If the unacceptable software (or its functional equivalent) is crucial to the accomplishment of the work for which the equipment was acquired, and is so

identified in the Lease Order, the State shall have the option of terminating the Lease Order and seeking any available remedies under contract or law.

G. LIQUIDATED DAMAGES

1. General

The Installation Dates of the equipment set forth in the Lease Order and the Delivery Dates for software set forth in the Lease Order have been fixed so that the utilization of the equipment and software is consistent with the timing schedules of the State's programs. If any of the units of equipment, with all required operating software, are not installed within the times specified in the Lease Order, and/or if any of the other software is not delivered to the State within the time limits specified in the Lease Order, the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained by the State from a delay will be the amounts set forth herein, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Similarly, a unilateral deferment by the State of equipment installation without written notification 15 days in advance of the installation date or a delay in readying the facility interferes with the installation schedule under which the Contractor is operating, will result in damages to the Contractor. The State and Contractor presume that in the event of such delay, the amount of damage which will be sustained by the Contractor will be the amount set forth herein, and they agree that in the event of such a delay, the State will pay such amount as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.

2. Equipment Installation Delays Caused by the Contractor

- a. If the Contractor does not install the equipment, (designated by the Contractor's type and model number), and special features included with the equipment (or suitable substitutes acceptable to the State), ready for use with all appropriate operating software, all as listed in the Lease Order, on or before the Installation Date(s) specified in the Lease Order, or in the case of the equipment described in a. above, deliver to the State in time for State installation, the Contractor shall be liable for fixed liquidated damages specified herein, in lieu of all other damages for such noninstallation. Liquidated damages shall accrue for each calendar day between the

Installation Date specified in the Lease Order and the date the equipment is certified ready for use or 180 calendar days, whichever occurs first.

- b. If some, but not all of the machines are installed, ready for use, during a period of time when liquidated damages are applicable, and the State uses any such installed machines, liquidated damages shall not accrue against the machines used for any calendar day the machines are so used.
 - c. If the delay is more than thirty (30) calendar days, then by written notice to the Contractor, the State may terminate the right of the Contractor to install, and may obtain substitute equipment, in accordance with the Rights and Remedies of the State for Default provision in the contract. In this event, the Contractor shall also be liable for liquidated damages, in the amounts specified herein until substitute equipment is installed, ready for use, or for 180 days from the installation date, whichever occurs first.
- 3. Other Delivery Delays Caused by the Contractor
 - a. If the Contractor does not deliver all the programming aids, program products, and applications (software) listed on the Lease Order ready for use in substantial accordance with the Contractor's specifications, on or before the Delivery Dates specified in the Lease Order, the Contractor shall be liable for liquidated damages in the amounts specified herein, in lieu of all other damages for such nondelivery. Liquidated damages shall accrue for each calendar day between the Delivery Date specified and the actual date of the delivery of such software or for 180 days, whichever occurs first. If the Contractor fails to provide the software listed in the Lease Order by the specified Delivery Date, but provides suitable substitution of software acceptable to the State, liquidated damages shall not apply to listed software for which substituted software is provided.
 - b. If the State is unable to use the equipment on the installation date because Contractor failed to deliver the software listed in the Lease Order by the delivery date specified in the Lease Order, and Contractor does not furnish suitable substitute software acceptable to the State, liquidated damages for equipment noninstallation shall be paid to the State in lieu of damages for software nondelivery. Such liquidated damages shall apply until the State uses the equipment or until Contractor provides the programming aids, program products, or applications which would render the equipment usable, whichever occurs first, but not for more than 180 calendar days.
- 4. Installation or Delivery Delays Caused by the State
 - a. In the event the equipment cannot be installed because the State has failed to prepare the facility by the Facility Readiness Date determined as stated herein, the State shall be liable for fixed liquidated damages in the amount equal to 1/30th of the basic monthly rental of said equipment and software or \$150, whichever is greater, for each day between the Facility Readiness Date

specified and the actual readiness date, but not to exceed 180 calendar days, in lieu of all other damages for such delay. Within any 30-day period such payments shall not exceed the monthly rental charges.

- b. In the event a change directed by the State requires a later installation date of certain equipment and the State has failed to notify the Contractor of the delay at least 15 days prior to the original Installation Date, the State shall be liable, in lieu of all other damages, for liquidated damages as above in a.(1) for each day between the original Installation Date and the new Installation Date, but not to exceed 180 calendar days.
- c. The State shall not be liable for liquidated damages under both a) and b) during the same period of time with respect to the same equipment.

5. Liquidated Damages Calculations

- a. For Controllers liquidated damages accrue at a rate of \$5.00 per day per port
- b. For Printers liquidated damages accrue at a rate of \$75.00 per day per machine
- c. For other equipment liquidated damages accrue at a rate of \$15.00 per day per machine

H. TERMINATION AND CONTINUATION

The State may terminate any leased equipment during the term of this contract, upon 30 days written notice to the Contractor, and if applicable, written notice to any third party payee assigned the contract for payment purposes. Payments of any applicable termination charges will be computed in accordance with the provisions specified herein under Costs.

1. Upgraded Equipment

Termination charges shall not apply for Controllers or Routers installed and upgraded per this Agreement under the following conditions:

- a. The Agency replaces a smaller controller or router with a larger controller or router, respectively, from the same Contractor capable of supporting more peripherals; and
- b. The smaller controller or router is not capable of being modified to support the required number of peripherals; and
- c. The additional peripherals, causing the controller or router upgrade requirements are ordered and installed in the larger device; and
- d. The replacement larger controller or router is ordered for a term of no less than 24 months.
- e. Starting with the effective date of this Agreement, after a router has been installed for no less than 12 months, no more than 10% of the total number of routers ordered by a single state agency under this agreement, provided no less than a total of 20 routers have been ordered, may be upgraded in any fiscal year, from July 1st through June 30th. Upgraded routers will not count in the total number of routers leased by an agency.

2. Early Termination

The fee for early termination of a Lease Order issued under the authority of this Agreement shall be calculated according to the formulae as stated in the Cost Section of this Agreement. There shall be no fee for termination for non-appropriation of funds.

3. Termination for Non-appropriation

General Provisions, Section 43, Termination for Non-Appropriation of Funds shall prevail.

4. Continuation of a Lease

Contractor agrees that Lease orders issued during the term of this Agreement shall be valid through the term of the order. The Contractor agrees to allow the State, if it so requests, to retain leased equipment on a month-to-month basis, after the expiration of the lease term at the same monthly payment previously charged.

I. CONTRACT ADMINISTRATION

1. Use of Equipment and Basis for Payment

a. General

- (1) Equipment leased under this contract may be operated at any time and for any length of time at the convenience of the State, exclusive of time required for preventative and remedial maintenance.
- (2) Without the prior written consent of the Contractor, the State shall not sublet equipment leased under this Agreement or permit the use of such equipment by any person other than the operators in the State's direct employ or under its direct supervision, or by representatives of the Contractor.

b. Lease Rates and Lease Plans

The monthly cost for use of the equipment (including operating software) leased for any duration under this Agreement shall be in accordance with the rates calculated from the Contractor's Price List less any discounts offered in the Cost Section of this Agreement. If the operating software is proprietary, the license for its use is contained in the Contract Language section of this Agreement.

c. Partial Monthly Rental

The basic monthly rental for a machine, initially installed for a fraction of a calendar month, shall be computed at the rate of 1/30th of the basic monthly rental for each day the machine was installed beginning on and including the first day of the successful 30-day acceptance period through the last calendar day of the month. A machine discontinued at other than the last day of the calendar month shall be billed for its basic monthly rental less 1/30th of the basic monthly rental for each calendar day in that month following the date of discontinuance.

d. Use of Software and Basis for Payment

Each item of software which is proprietary in nature shall be licensed to the ordering Agency for its use in accordance with the provisions herein contained under Contract Language, Information Technology Software Special Provisions. Except as may be provided herein in Contract Language, the State shall have unrestricted use of such software.

2. Title to Equipment

Title to equipment, accessories and devices leased under this Agreement shall not vest in the State, unless such items are purchased by the State. All devices and accessories furnished by the Contractor hereunder, except those purchased by the State, shall accompany the equipment when returned to the Contractor.

3. Sales Representation

Each Contractor shall provide sales representatives available five (5) working days a week for Teale Data Center (TDC) and Health and Welfare Agency Data Center (HWDC) to assist in the ordering of equipment and/or software. These sales representatives must also assist in resolving any problems which may arise during the period of the Agreement. The Contractor must provide additional sales representatives (also available 5 days a week) as needed by TDC and HWDC and other Agencies, to assist in the ordering of equipment and/or software and in resolving any problems which may arise during the Agreement period.

4. Contractor Sales Response Requirements

- a. Contractor(s) shall be expected to provide responsive sales representation to the State. Such representation shall be available on a maximum 24-hour call-back to respond to requests for information, such as an order and/or configuration information, follow-ups on delivery schedules, equipment installation or operation information, etc. In the event the State is not satisfied with the responsiveness of the sales representative, the Contractor shall provide the name of an authorized Contractor representative who will have the authority to immediately resolve any administrative and/or service problems that have not been resolved in a timely manner. This person(s) must be identified in the Contract.

- (1) Agencies shall contact the Contractor sales representatives as needed in order to obtain information.
- (2) Sales representatives, or designee of same or higher staff level, shall respond to ordering Agencies via return telephone call or on-site visit within 24 hours of Agency contact.
- (3) Should Contractor sales representatives not contact the ordering Agency within 24 hours of telephone call for information, the Agency shall contact the DGS Procurement Division contact person for the Agreement relating details of the occurrence. After the contact, the Agreement contact person

at DGS will make an attempt to contact the Contractor's sales organization.

- (4) If the Contractor has not contacted the ordering Agency within the 24 hours (now 48 hours since first attempt to contact) the Procurement Division Agreement contact person shall make an attempt to contact the Contractor's regional corporate office via telephone calls well as FAX to advise of the sales organization's non-responsiveness.
 - (5) A Contractor corporate officer shall thereupon cause the local sales representative to respond within 24 hours to the requesting Agency. In addition, the Contractor corporate officer shall, within 5 working days of contact, advise the Procurement Division, in writing, of action taken to correct the non-responsive situation.
 - (6) If an ordering Agency request for information is preliminary to the placement of an order for a new system, and lack of response prohibits the ordering Agency from placing the order, the Agency shall so advise the Procurement Division. If, in such instances, the Contractor does not respond to the ordering Agency within 24 hours of contact by the Procurement Division Agreement contact person it will be considered a breach of contract and subject to Rights and Remedies of State for Default, Section 24, of the General Terms and Conditions.
- b. If, in any three month period during the life of this Agreement, the Procurement Division Agreement contact person must contact the Contractor's regional corporate officer three or more times because of non-responsiveness as described above, the State may seek remedies under General Terms and Conditions, Section 24, Rights and Remedies of State for Default.

5. Invoice and Order Identification Process

- a. Invoices shall be submitted as specified on the individual Lease Orders as submitted to the Contractor. The Contractor shall render invoices for total monthly maintenance charges in the month following the month for which the charges accrue.
- b. The Contractor must provide within 30 days of contract award an invoicing methodology for the manual ordering system. An electronic invoicing system must be provided within 60 days complying with the latest revision of ANSI (ASC) X.12 EDI standards. The billing can be transmitted electronically; however, it will be at the option of the ordering Agency to determine if the electronically transmitted method or the manual method is utilized.
- c. Naming conventions for site identification and serial numbers will be provided in advance to the State. These identifying conventions must be mutually acceptable to the State and the Contractor. All invoices, shipping

documents, etc., and the installed equipment must use the same naming convention.

- d. Invoices will be provided in a format acceptable to the State and mutually agreed upon by the Contractor and the State.

Equipment accountability will be by model number, serial number, and physical location. Additional methods of accountability will be mutually agreed upon by the State and the Contractor and be made a part of the Contract.

The Contractor shall make every effort to reconcile incorrect invoices in a timely manner. This should not exceed 30 days from notification by the ordering Agency of the discrepancy. The State and/or ordering Agency may withhold payments of all invoices, issued as a result of this agreement, until the discrepancies have been corrected.

The Contractor shall, in addition, make every effort to reflect relocations on invoices in a timely manner. This should not exceed 30 days after receipt of the approved relocation document. The State and/or Agency may withhold payments of all invoices until the discrepancies have been corrected.

6. Invoices and Payments

- a. Submission of Invoices

The Contractor shall render invoices to the name and address listed on the Lease Order for monthly charges and such additional charges as are applicable. Such invoices are not due and payable, and do not constitute an obligation of the State, until the services or products are provided and accepted.

- b. Additional Charges

If extra charges are applicable, and/or if additional charges for maintenance outside the Period of Maintenance Coverage are applicable, the State shall provide the Contractor a purchase order to cover such charges. The order shall be issued on a timely basis and be based on appropriate records which are subject to joint review by the State and Contractor.

- c. Payment

The promptness of payments shall be governed by Government Code 926.19 et seq.

- d. Required Payment Date

When payment is due shall be governed by Government Code 927 et seq., as per General Provisions section 30. When provision is made for a testing period preceding acceptance by the State, date of acceptance shall mean the

date the equipment and/or software is accepted by the State during the specified testing period.

e. On-line ordering and catalog

If any on-line ordering method of submitting order forms is developed by the State, Contractor will agree to develop their portion of an on-line ordering system to accommodate an interface. Use of an on-line ordering procedure and/or on-line catalog may be initiated upon approval by the ordering Agency. Upon award of a contract world wide web based catalogs and on-line ordering forms to assist in identifying ordering Agency requirements for orders are greatly encouraged.

7. Reporting Requirements

The Contractor shall provide monthly reports of ordering activity against this Agreement containing the listed information to the Department of General Services address below.

a. Required information:

- (1) Agreement number and Purchase Order number
- (2) Complete address of Ordering Agency named on Lease Order
- (3) Bill Code of Ordering Agency
- (4) Lease Order total or Lease Order Amendment total

Send reports to: Department of General Services
Master Agreements and Contracts
1823 - 14th Street
Sacramento, CA 95814

- b. The Data Centers and larger ordering Agencies may require “specialized reports” be run at various times throughout the life of the Agreement. The Contractor must have the ability to provide these reports including, but not limited to, in addition to the information provided the Department of General Services, as a minimum the Description with System number, Type/Model, Serial number, Contract Start Date, Warranty Start/End Date, Maintenance Start/End, Lease Start/End dates, and any special maintenance coverage purchased from the Price List. Personnel from the ordering Agency will work with the Contractor to coordinate the generation of these reports. Such special reports may involve statistics, quantity and cost analysis. Such reports must be provided throughout the term of the Agreement. These reports must be provided at no charge within fifteen (15) days of an approved request from the ordering Agency. The State expects to require no more than five (5) such reports a month. At the ordering Agency’s request these reports may be transmitted electronically in a format acceptable to the Agency.

- c. The Contractor shall work with the State to develop a microcomputer program to perform calculations for maintenance, purchase conversion, and/or coterminous amounts.

8. Supplies

Rental charges do not include supplies necessary for the operation of the equipment. Such supplies used by the State shall conform to the Contractor's published specifications.

9. Connection Points for Central Processor Evaluation Equipment

If requested by the State, the Contractor agrees to identify, on all items of equipment supplied under this contract, all appropriate test points for connecting one of the commercially available hardware monitors designed to measure system activity. The State agrees that it will not attempt to connect such device until the Contractor agrees that such a connection will not damage the equipment.

10. Interface to Existing Equipment

The Contractor shall be responsible for the compatible interface of all equipment provided under this Agreement with existing installed systems.

11. Software Customization and Configuration

Contractor shall provide to each ordering Agency, software customization and configuration support for control units and devices acquired under this Agreement. Software customization is software which defines the operating parameters desired by the State for the applicable control unit. This includes newly acquired control units as well as changes to existing control units that were acquired under this Agreement